

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE ENROLLED ACT No. 1855

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 31-19-9-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10. A court shall determine that consent to adoption is not required from a parent if:

(1) the parent is convicted of and incarcerated at the time of the filing of a petition for adoption for:

- (A) murder (IC 35-42-1-1);
- (B) causing suicide (IC 35-42-1-2);
- (C) voluntary manslaughter (IC 35-42-1-3);
- (D) rape (IC 35-42-4-1);
- (E) criminal deviate conduct (IC 35-42-4-2);
- (F) child molesting as a Class A or Class B felony (IC 35-42-4-3);
- (G) incest as a Class B felony (IC 35-46-1-3);
- (H) neglect of a dependent as a Class B felony (IC 35-46-1-4);
- (I) battery of a child as a Class C felony (IC 35-42-2-1(a)(3));

or

(J) battery as a Class A felony (IC 35-42-2-1(a)(5)) or Class B felony (IC 35-42-2-1(a)(4)); or

(K) an attempt under IC 35-41-5-1 to commit an offense described in clauses (A) through (I); (J);

(2) the child or the child's sibling, half-blood sibling, or step-sibling of the parent's current marriage is the victim of the



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offense; and

(3) after notice to the parent and a hearing, the court determines that dispensing with the parent's consent to adoption is in the child's best interests.

SECTION 2. IC 31-34-21-5.6, AS AMENDED BY P.L.133-2000, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5.6. (a) A court may make a finding described in this section at any phase of a child in need of services proceeding.

(b) Reasonable efforts to reunify a child with the child's parent, guardian, or custodian or preserve a child's family as described in section 5.5 of this chapter are not required if the court finds any of the following:

(1) A parent, guardian, or custodian of a child who is a child in need of services has been convicted of:

(A) an offense described in IC 31-35-3-4(1)(B) or IC 31-35-3-4(1)(D) through IC 31-35-3-4(1)(J) against a victim who is:

- (i) a child described in IC 31-35-3-4(2); or
- (ii) a parent of the child; or

(B) a comparable offense as described in clause (A) in any other state, territory, or country by a court of competent jurisdiction.

(2) A parent, guardian, or custodian of a child who is a child in need of services:

(A) has been convicted of:

- (i) the murder (IC 35-42-1-1) or voluntary manslaughter (IC 35-42-1-3) of a victim who is a child described in IC 31-35-3-4(2)(B) or a parent of the child; or
- (ii) a comparable offense described in item (i) in any other state, territory, or country; or

(B) has been convicted of:

- (i) aiding, inducing, or causing another person;
- (ii) attempting; or
- (iii) conspiring with another person;

to commit an offense described in clause (A).

(3) A parent, guardian, or custodian of a child who is a child in need of services has been convicted of:

(A) **battery (IC 35-42-2-1(a)(5)) as a Class A felony;**

(B) battery (IC 35-42-2-1 (a)(4)) as a Class B felony;

~~(B)~~ (C) battery (IC 35-42-2-1(a)(3)) as a Class C felony;

~~(C)~~ (D) aggravated battery (IC 35-42-2-1.5);

~~(D)~~ (E) criminal recklessness (IC 35-42-2-2(c)) as a Class C

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felony;
~~(E)~~ (F) neglect of a dependent (IC 35-46-1-4) as a Class B felony; or
~~(F)~~ (G) a comparable offense described in clauses (A) through ~~(E)~~ (F) in another state, territory, or country;
 against a child described in IC 31-35-3-4(2)(B).

(4) The parental rights of a parent with respect to a biological or adoptive sibling of a child who is a child in need of services have been involuntarily terminated by a court under:

- (A) IC 31-35-2 (involuntary termination involving a delinquent child or a child in need of services);
- (B) IC 31-35-3 (involuntary termination involving an individual convicted of a criminal offense); or
- (C) any comparable law described in clause (A) or (B) in any other state, territory, or country.

(5) The child is an abandoned infant, provided that the court:

- (A) has appointed a guardian ad litem or court appointed special advocate for the child; and
- (B) after receiving a written report and recommendation from the guardian ad litem or court appointed special advocate, and after a hearing, finds that reasonable efforts to locate the child's parents or reunify the child's family would not be in the best interests of the child. However, there is a rebuttable presumption that it is not in the best interests of the child to locate the child's parent or reunify the child's family if the child was left with an emergency medical services provider who took custody of the child under IC 31-34-2.5.

SECTION 3. IC 35-33-1-1, AS AMENDED BY P.L.47-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) A law enforcement officer may arrest a person when the officer has:

- (1) a warrant commanding that the person be arrested;
- (2) probable cause to believe the person has committed or attempted to commit, or is committing or attempting to commit, a felony;
- (3) probable cause to believe the person has violated the provisions of IC 9-26-1-1(1), IC 9-26-1-1(2), IC 9-26-1-2(1), IC 9-26-1-2(2), IC 9-26-1-3, IC 9-26-1-4, or IC 9-30-5;
- (4) probable cause to believe the person is committing or attempting to commit a misdemeanor in the officer's presence;
- (5) probable cause to believe the person has committed a:
 - (A) **battery resulting in death under IC 35-42-2-1(a)(5);**



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(B) battery resulting in bodily injury under IC 35-42-2-1; or

(C) domestic battery under IC 35-42-2-1.3.

The officer may use an affidavit executed by an individual alleged to have direct knowledge of the incident alleging the elements of the offense of battery to establish probable cause;

(6) probable cause to believe that the person violated IC 35-46-1-15.1 (invasion of privacy);

(7) probable cause to believe that the person has committed stalking (IC 35-45-10);

(8) probable cause to believe that the person violated IC 35-47-2-1 (carrying a handgun without a license) or IC 35-47-2-22 (counterfeit handgun license); or

(9) probable cause to believe that the person is violating or has violated an order issued under IC 35-50-7.

(b) A person who:

(1) is employed full time as a federal enforcement officer;

(2) is empowered to effect an arrest with or without warrant for a violation of the United States Code; and

(3) is authorized to carry firearms in the performance of the person's duties;

may act as an officer for the arrest of offenders against the laws of this state where the person reasonably believes that a felony has been or is about to be committed or attempted in the person's presence.

SECTION 4. IC 35-42-2-1, AS AMENDED BY P.L.43-2000, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery, a Class B misdemeanor. However, the offense is:

(1) a Class A misdemeanor if:

(A) it results in bodily injury to any other person;

(B) it is committed against a law enforcement officer or against a person summoned and directed by the officer while the officer is engaged in the execution of his official duty;

(C) it is committed against an employee of a penal facility or a juvenile detention facility (as defined in IC 31-9-2-71) while the employee is engaged in the execution of the employee's official duty; or

(D) it is committed against a firefighter (as defined in IC 9-18-34-1) while the firefighter is engaged in the execution of the firefighter's official duty;

(2) a Class D felony if it results in bodily injury to:

(A) a law enforcement officer or a person summoned and

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directed by a law enforcement officer while the officer is engaged in the execution of his official duty;

(B) a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age;

(C) a person of any age who is mentally or physically disabled and is committed by a person having the care of the mentally or physically disabled person, whether the care is assumed voluntarily or because of a legal obligation;

(D) the other person and the person who commits the battery was previously convicted of a battery in which the victim was the other person;

(E) an endangered adult (as defined by IC 35-46-1-1);

(F) an employee of the department of correction while the employee is engaged in the execution of the employee's official duty;

(G) an employee of a school corporation while the employee is engaged in the execution of the employee's official duty;

(H) a correctional professional while the correctional professional is engaged in the execution of the correctional professional's official duty;

(I) a person who is a health care provider (as defined in IC 16-18-2-163) while the health care provider is engaged in the execution of the health care provider's official duty;

(J) an employee of a penal facility or a juvenile detention facility (as defined in IC 31-9-2-71) while the employee is engaged in the execution of the employee's official duty; or

(K) a firefighter (as defined in IC 9-18-34-1) while the firefighter is engaged in the execution of the firefighter's official duty;

(3) a Class C felony if it results in serious bodily injury to any other person or if it is committed by means of a deadly weapon; **and**

(4) a Class B felony if it results in serious bodily injury to a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age; **and**

(5) a Class A felony if it results in the death of a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age.

(b) For purposes of this section:

(1) "law enforcement officer" includes an alcoholic beverage enforcement officer; and

(2) "correctional professional" means a:

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- (A) probation officer;
- (B) parole officer;
- (C) community corrections worker; or
- (D) home detention officer.

SECTION 5. IC 35-47-4-5, AS AMENDED BY HEA 1892-2001, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) As used in this section, "serious violent felon" means a person who has been convicted of:

- (1) committing a serious violent felony in:
 - (A) Indiana; or
 - (B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of a serious violent felony; or
- (2) attempting to commit or conspiring to commit a serious violent felony in:
 - (A) Indiana as provided under IC 35-41-5-1 or IC 35-41-5-2; or
 - (B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of attempting to commit or conspiring to commit a serious violent felony.
- (b) As used in this section, "serious violent felony" means:
 - (1) murder (IC 35-42-1-1);
 - (2) voluntary manslaughter (IC 35-42-1-3);
 - (3) reckless homicide not committed by means of a vehicle (IC 35-42-1-5);
 - (4) battery as a:
 - (A) **Class A felony (IC 35-42-2-1(a)(5));**
 - (B) Class B felony (IC 35-42-2-1(a)(4)); or
 - (C) Class C felony (IC 35-42-2-1(a)(3));
 - (5) aggravated battery (IC 35-42-2-1.5);
 - (6) kidnapping (IC 35-42-3-2);
 - (7) criminal confinement (IC 35-42-3-3);
 - (8) rape (IC 35-42-4-1);
 - (9) criminal deviate conduct (IC 35-42-4-2);
 - (10) child molesting (IC 35-42-4-3);
 - (11) sexual battery as a Class C felony (IC 35-42-4-8);
 - (12) robbery (IC 35-42-5-1);
 - (13) carjacking (IC 35-42-5-2);
 - (14) arson as a Class A felony or Class B felony (IC 35-43-1-1(a));
 - (15) burglary as a Class A felony or Class B felony

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- (IC 35-43-2-1);
- (16) assisting a criminal as a Class C felony (IC 35-44-3-2);
- (17) resisting law enforcement as a Class B felony or Class C felony (IC 35-44-3-3);
- (18) escape as a Class B felony or Class C felony (IC 35-44-3-5);
- (19) trafficking with an inmate as a Class C felony (IC 35-44-3-9);
- (20) criminal gang intimidation (IC 35-45-9-4);
- (21) stalking as a Class B felony or Class C felony (IC 35-45-10-5);
- (22) incest (IC 35-46-1-3);
- (23) dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1);
- (24) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);
- (25) dealing in a schedule IV controlled substance (IC 35-48-4-3);
- or
- (26) dealing in a schedule V controlled substance (IC 35-48-4-4).

(c) A serious violent felon who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a serious violent felon, a Class B felony.

SECTION 6. IC 35-50-2-2, AS AMENDED BY HEA 1892-2001, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence:

- (1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.
- (2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.
- (3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is



being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

- (A) murder (IC 35-42-1-1);
- (B) battery (IC 35-42-2-1) with a deadly weapon **or battery causing death**;
- (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- (D) kidnapping (IC 35-42-3-2);
- (E) confinement (IC 35-42-3-3) with a deadly weapon;
- (F) rape (IC 35-42-4-1) as a Class A felony;
- (G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;
- (H) child molesting (IC 35-42-4-3) as a Class A or Class B felony;
- (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;
- (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;
- (K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;
- (L) resisting law enforcement (IC 35-44-3-3) with a deadly weapon;
- (M) escape (IC 35-44-3-5) with a deadly weapon;
- (N) rioting (IC 35-45-1-2) with a deadly weapon;
- (O) dealing in cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:
 - (i) school property;
 - (ii) a public park;
 - (iii) a family housing complex; or
 - (iv) a youth program center;
- (P) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the

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person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;
- (Q) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5; or
- (R) aggravated battery (IC 35-42-2-1.5).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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